

FIRST REGULAR SESSION

# SENATE BILL NO. 381

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Read 1st time February 16, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1853S.011

## AN ACT

To amend chapter 442, RSMo, by adding thereto one new section relating to conservation easements.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 442, RSMo, is amended by adding thereto one new section, to be known as section 442.014, to read as follows:

**442.014. 1. This act shall be known and may be cited as the "Missouri Conservation Easement Act".**

**2. As used in this section, unless the context otherwise requires, the following terms mean:**

**(1) "Conservation easement", a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property;**

**(2) "Holder", a governmental body empowered to hold an interest in real property under the laws of this state or the United States; or a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property;**

22           (3) "Third-party right of enforcement", a right provided in a  
23 conservation easement to enforce any of its items granted to a  
24 governmental body, charitable corporation, charitable association, or  
25 charitable trust, which, although eligible to be a holder, is not a holder.

26           3. (1) Except as otherwise provided in this section, a  
27 conservation easement may be created, conveyed, recorded, assigned,  
28 released, modified, terminated, or otherwise altered or affected in the  
29 same manner as other easements. No right or duty in favor of or  
30 against a holder and no right in favor of a person having a third-party  
31 right of enforcement arises under a conservation easement before its  
32 acceptance by the holder and a recordation of the acceptance. Except  
33 as provided in subdivision (2) of this subsection, a conservation  
34 easement is unlimited in duration unless the instrument creating it  
35 provides otherwise.

36           (2) An interest in real property in existence at the time a  
37 conservation easement is created is not impaired by it unless the owner  
38 of the interest is a party to the conservation easement or consents to  
39 it.

40           4. (1) An action affecting a conservation easement may be  
41 brought by an owner of an interest in real property burdened by the  
42 easement; a holder of the easement, a person having a third-party right  
43 of enforcement; or a person authorized by other law.

44           (2) This section does not affect the power of a court to modify or  
45 terminate a conservation easement in accordance with the principles  
46 of law and equity.

47           5. A conservation easement is valid even though:

48           (1) It is not appurtenant to an interest in real property;

49           (2) It can be or has been assigned to another holder;

50           (3) It is not of a character that has been recognized traditionally  
51 at common law;

52           (4) It imposes a negative burden;

53           (5) It imposes affirmative obligations upon the owner of an  
54 interest in the burdened property or upon the holder;

55           (6) The benefit does not touch or concern real property; or

56           (7) There is no privity of estate or of contract.

57           6. This section applies to any interest created after its effective  
58 date which complies with this section, whether designated as a

59 conservation easement or as a covenant, equitable servitude,  
60 restriction, easement, or otherwise. This section applies to any interest  
61 created before its effective date if it would have been enforceable had  
62 it been created after its effective date unless retroactive application  
63 contravenes the constitution or laws of this state or the United  
64 States. This section does not invalidate any interest, whether  
65 designated as a conservation or preservation easement or as a  
66 covenant, equitable servitude, restriction, easement, or otherwise, that  
67 is enforceable under other laws of this state.

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